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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

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13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 y.

18 RIVERSIDE CEMENT COMPANY,

19 Defendant.

CV08-01284

ABC (JCRx)

Case No. _____

COMPLAINT

21 COMPLAINT FOR INJUNCTIVE RELIEF AND
22 CIVIL PENALTIES UNDER THE CLEAN AIR ACT

23 Plaintiff United States of America, by authority of the Attorney General
24 of the United States and through the undersigned attorneys, acting at the request of
25 the Administrator of the United States Environmental Protection Agency ("EPA"),
26 files this complaint and alleges as follows:

NATURE OF ACTION

1
2 1. This is a civil action brought pursuant to Section 113(b) of Clean Air
3 Act (the "Act"), 42 U.S.C. § 7413(b), for civil penalties and injunctive relief against
4 Riverside Cement Company ("RCC") based on violations of the Act, the National
5 Emissions Standards for Hazardous Air Pollutants for the Portland Cement
6 Manufacturing Industry (the "Portland Cement NESHAP"), as codified at 40 C.F.R.
7 Part 63, Subparts A and LLL; Rule 1161 of the Mojave Desert Air Quality
8 Management District ("MDAQMD" or "District"), as incorporated into California's
9 applicable implementation plan; and provisions in the federally enforceable
10 operating permit issued to RCC pursuant to Title V of the Act, 42 U.S.C. §§ 7661-
11 7661f.

JURISDICTION AND VENUE

12
13 2. This Court has jurisdiction over the subject matter of this action
14 pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331
15 and 1345.

16 3. Venue is proper in this District pursuant to Section 113(b) of the Act,
17 42 U.S.C. § 7413(b), and 28 U.S.C. § 1391(b), because the RCC may be found, and
18 the violations occurred, in this District.

NOTICE AND AUTHORITY

19
20 4. Notice of the commencement of this action has been given to the
21 appropriate air pollution control agency in the state of California, as required by
22 Section 113(b) of the Act, 42 U.S.C. § 7413(b).

23 5. Authority to bring this action is vested in the U.S. Department of
24 Justice pursuant to 28 U.S.C. §§ 516 and 519 and Section 305(a) of the Act, 42
25 U.S.C. § 7605(a).

DEFENDANT

6. RCC is a general partnership organized under the laws of the state of California. RCC owns and operates a portland cement manufacturing facility located at 19409 National Trails Highway, Oro Grande, San Bernardino County, California (the "Facility").

7. RCC is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

STATUTORY AND REGULATORY BACKGROUND

8. The Act was enacted to protect and to enhance the quality of the nation's air resources so as to promote the public's health and welfare and the productive capacity of the population. 42 U.S.C. § 7401(b).

National Emission Standards for Hazardous Air Pollutants

9. Section 112(d) of the Act, 42 U.S.C. § 7412(d), requires EPA to establish emission standards for each category of major sources of the hazardous air pollutants ("HAP") listed in the statute.

10. On June 14, 1999, EPA promulgated the National Emissions Standards for Hazardous Air Pollutants ("NESHAP") for the Portland Cement Manufacturing Industry. 64 Fed. Reg. 31898-01. These provisions are codified at 40 C.F.R. Part 63, Subpart LLL, and are referred to herein as the Portland Cement NESHAP.

11. EPA promulgated the General Provisions for all NESHAP sources on March 16, 1994. 59 Fed. Reg. 12430. These provisions are codified at 40 C.F.R. Part 63, Subpart A (the "General NESHAP").

12. The Portland Cement NESHAP applies to each new and existing portland cement plant that is a major source. 40 C.F.R. § 63.1340(a). A "portland cement plant" is a facility that manufactures portland cement. 40 C.F.R. § 63.1341.

1 A "major source" is a stationary source or group of stationary sources within a
2 contiguous area and under common control that emits or has the potential to emit 10
3 or more tons per year of any single HAP or 25 or more tons per year of any
4 combination of HAPs. 42 U.S.C. § 7412(a)(1); 40 C.F.R. § 63.2.

5 13. The compliance date for existing portland cement plants was June 14,
6 2002. 40 C.F.R. § 63.1351(a).

7 14. The Portland Cement NESHAP imposes emission standards (or limits)
8 on HAP emissions from the following "affected sources" at portland cement plants:
9 kilns and in-line kiln/raw mills; clinker coolers; raw mills; finish mills; raw material
10 dryers; raw material, clinker, or finished product storage bins; conveying system
11 transfer points used to convey coal from the mill to the kiln; and bagging and bulk
12 loading or unloading systems. 40 C.F.R. § 63.1340(b).

13 15. The emission standards and operating limits applicable to affected
14 sources are set forth in 40 C.F.R. §§ 63.1343 through 63.1348.

15 16. 40 C.F.R. § 63.1343(b) prohibits the discharge from kilns and in-line
16 kilns/raw mills of any gases containing dioxin and furan ("D/F") in excess of: (i)
17 0.20 nanograms per dry standard cubic meter at standard conditions (8.7×10^{-11}
18 grains per dry standard cubic foot at standard conditions) (TEQ) corrected to seven
19 percent oxygen; or (ii) 0.40 nanograms per dry standard cubic meter at standard
20 conditions (1.7×10^{-10} grains per dry standard cubic foot at standard conditions)
21 (TEQ) corrected to seven percent oxygen, when the average of the performance test
22 run average temperatures at the inlet to the particulate matter control device is
23 204°C (400°F) or less.

24 17. Because kiln firing temperatures directly relate to D/F emissions, 40
25 C.F.R. § 63.1344 imposes operating limits on kiln baghouse temperatures.
26 Specifically, kilns must be operated such that the temperature of the gas at the inlet
27
28

1 to the kiln particulate matter control device ("PMCD") and alkali bypass PMCD, if
2 applicable, does not exceed the applicable temperature limit as determined in
3 accordance with the procedures set forth in 40 C.F.R. § 63.1349(b)(3)(iv).

4 18. 40 C.F.R. § 1348 prohibits the discharge of any gases exhibiting
5 opacity in excess of ten percent from any new or existing raw material, clinker, or
6 finished product storage bin; conveying system transfer point; bagging system; or
7 existing raw material dryer.

8 19. To demonstrate compliance with these emissions standards, the
9 Portland Cement NESHAP sets forth mandatory test methods and compliance
10 procedures, as well as specific monitoring requirements. 40 C.F.R. §§ 63.1349 and
11 63.1350.

12 20. One such monitoring requirement is set forth in 40 C.F.R. §
13 63.1350(e), which requires the owner or operator of a raw mill or finish mill to
14 "monitor opacity by conducting daily visual emissions observations of the mill
15 sweep and air separator PMCD of these affected sources" in accordance with the
16 procedures of Method 22 of Appendix A-7 to 40 C.F.R. Part 60 ("Method 22"). If
17 visible emissions are observed during any Method 22 visible emission test, the
18 owner or operator must: (1) initiate, within one hour, the corrective action specified
19 in the site operations and maintenance plan; and (2) conduct a follow-up Method 22
20 test within 24 hours of the Method 22 test during which the visible emissions were
21 observed. If visible emissions are again observed during the follow-up test, then
22 the owner or operator must conduct a visual opacity test of each stack from which
23 emissions were observed during the follow-up test, in accordance with Method 9 of
24 Appendix A-4 to 40 C.F.R. Part 60 ("Method 9").

25 21. The Portland Cement NESHAP also imposes various reporting and
26 recordkeeping obligations on affected sources. 40 C.F.R. §§ 63.1353-63.1355.

1 22. The owner or operator of a portland cement plant must develop and
2 implement a written startup, shutdown, and malfunction plan ("SSMP") that
3 "describes, in detail, procedures for operating and maintaining the source during
4 periods of startup, shutdown, and malfunction; and a program of corrective action
5 for malfunctioning process, air pollution control, and monitoring equipment used to
6 comply with the relevant standard." 40 C.F.R. §§ 63.6(e)(3)(i); 63.1342(a) and
7 Table 1.

8 23. At all times, including periods of startup, shutdown, and malfunction,
9 affected sources, including associated air pollution control equipment and
10 monitoring equipment, must be operated and maintained in "a manner consistent
11 with safety and good air pollution control practices for minimizing emissions." 40
12 C.F.R. §§ 63.6(e)(1)(i); 63.1342(a) and Table 1.

13 California Implementation Plan – MDAQMD Rule 1161

14 24. Section 109(a) of the Act, 42 U.S.C. § 7409(a), requires EPA to
15 publish national ambient air quality standards ("NAAQS") for criteria air
16 pollutants. The NAAQS establish primary and secondary air quality standards to
17 protect public health and welfare. 42 U.S.C. § 7409(b).

18 25. EPA has promulgated NAAQS for certain criteria air pollutants,
19 including, *inter alia*, nitrogen dioxide, a form of nitrogen oxides ("NOx"), and
20 ozone. 40 C.F.R. §§ 50.9, 50.10, 50.11.

21 26. To achieve the objectives of the NAAQS and the Act, Section 110(a)
22 of the Act, 42 U.S.C. § 7410(a), requires each state to submit a plan to EPA that
23 provides for the implementation, maintenance and enforcement of the NAAQS in
24 each air quality control region. Upon approval by EPA, the plan becomes part of
25 the applicable implementation plan ("SIP") for the State. SIP requirements are
26 federally enforceable under Section 113(a)(1) of the Act, 42 U.S.C. § 7412(a)(1).

1 27. Section 107(d) of the CAA, 42 U.S.C. § 7407(d), requires each state to
2 designate those areas within its boundaries where the air quality is better or worse
3 than the NAAQS for each criteria pollutant, or where the air quality cannot be
4 classified due to insufficient data. Areas that meet the NAAQS for a particular
5 pollutant are called "attainment" areas for that pollutant, while areas that do not
6 meet the NAAQS for a particular pollutant are called "non-attainment" areas.
7 Areas that cannot be classified are called "unclassifiable."

8 28. The Facility is located in Oro Grande, California, within the
9 jurisdiction of the MDAQMD. At all times relevant to this action, the Facility has
10 been located in an area designated as severe non-attainment for the NAAQS for
11 ozone. 40 C.F.R. § 81.305.

12 29. The District enacted MDAQMD Rule 1161 to limit NOx emissions
13 from existing portland cement kilns.

14 30. MDAQMD Rule 1161 applies to all existing portland cement kilns
15 operated within the federal ozone non-attainment area of MDAQMD.

16 31. MDAQMD Rule 1161(C)(2)(a) provides that the owner or operator of
17 a short dry kiln shall not exceed the NOx emission limit of 7.2 lbs/ton of clinker
18 produced when averaged over any 30 consecutive day period during all periods
19 except startup and shutdown. For kiln systems which recover waste heat and
20 convert it into electricity, the applicable NOx emission limit must be adjusted by the
21 recovery factor specified in Rule 1161(C)(2)(b).

22 32. MDAQMD Rule 1161(B)(18)(c) defines a "short dry kiln" as a
23 portland cement kiln "less than 14' in diameter, less than 40' in length, which
24 employs no preheating of the dry feed."

25 33. MDAQMD Rule 1161 has been approved by EPA and made part of
26 the federally enforceable California SIP. 67 Fed. Reg. 19 (Jan. 2, 2002); 68 Fed.

1 Reg. 9015 (Feb. 27, 2003) (approval of revised Rule 1161).

2 Title V of the Clean Air Act

3 34. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating
4 permit program for certain sources of air pollution, including major sources. 42
5 U.S.C. § 7661a(a). Pursuant to Section 502(b) of the Act, 42 U.S.C. § 7661a(b),
6 EPA has promulgated regulations implementing the requirements of Title V and
7 establishing the minimum elements of an operating permit program to be
8 administered by any state or local air pollution control agency. 57 Reg. 32250 (July
9 21, 1992). These regulations are codified at 40 C.F.R. Part 70.

10 35. "Major source" is defined in Section 501 of the Act, 42 U.S.C. §
11 7661(2) and at 40 C.F.R. § 70.2, as, *inter alia*, any source that directly emits or has
12 the potential to emit 100 tons or more per year of any regulated air pollutant. NO_x
13 is listed as a regulated air pollutant in 40 C.F.R. 70.2.

14 36. Section 502(d) of the Act, 42 U.S.C. § 7661a(d), requires each state to
15 submit to EPA a permit program meeting the requirements of Title V.

16 37. Effective November 30, 2001, EPA granted final approval to the
17 California Title V operating permit program. 66 Fed. Reg. 63504.

18 38. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), makes it unlawful to
19 violate any requirement of a Title V permit after the effective date of any state's
20 Title V permit program. 40 C.F.R. § 70.1(b).

21 Enforcement Authority

22 39. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides:

23 Whenever, on the basis of any information
24 available to the Administrator, the Administrator
25 finds that any person has violated or is in violation
26 of any requirement or prohibition of any applicable
27
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1 implementation plan or permit, the Administrator
2 shall notify the person and the State in which the
3 plan applies of such finding. At any time after the
4 expiration of 30 days following the date on which
5 such notice of violation is issued, the Administrator
6 may . . .

7 * * *

8 (C) bring a civil action in accordance with
9 subsection (b) of this section.

10 40. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that
11 “[e]xcept for a requirement or prohibition enforceable under the preceding
12 provision of this subsection, whenever, on the basis of any information available to
13 the Administrator, the Administrator finds that any person has violated, or is in
14 violation of, any other requirement or prohibition of this subchapter . . . the
15 Administrator may . . . bring a civil action in accordance with subsection (b) of this
16 section”

17 41. Section 113(b)(1) of the Act, 42 U.S.C. § 7413(b)(1), authorizes the
18 Administrator of EPA, acting through the Attorney General, to initiate a judicial
19 enforcement action for a permanent or temporary injunction, and/or for a civil
20 penalty against any person who has violated, or is in violation of, any requirement
21 or prohibition of an applicable implementation plan or permit.

22 42. Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), authorizes the
23 Administrator of EPA, acting through the Attorney General, to initiate a judicial
24 enforcement action for a permanent or temporary injunction, and/or for a civil
25 penalty against any person who has violated, or is in violation of, any requirement
26 of the Act other than those specified in Section 113(b)(1), 42 U.S.C. § 7413(b)(1).

GENERATION ALLEGATIONS

43. At all times pertinent to this action, RCC has owned and operated the Facility in Oro Grande, California, within the jurisdiction of MDAQMD.

44. The Facility was constructed in the 1940s and 1950s and consists of five quarries, seven short dry kilns, and other equipment necessary to produce portland cement.

45. Portland cement is a fine powder that serves as the key ingredient in the concrete used in most construction.

46. During the portland cement production process, the Facility emits several air pollutants, including but not limited to CO, NO_x, and SO₂.

47. EPA has conducted an investigation of the Facility, which included a site inspection, review of permitting history and emissions data, and analysis of other relevant information obtained from RCC concerning the Facility.

48. Pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), EPA issued a written Finding and Notice of Violation ("NOV") to RCC on or about November 16, 2006. The NOV cited violations of the NESHAP, MDAQMD Rule 1161, and RCC's Title V permit for the Facility.

FIRST CLAIM FOR RELIEF

(NESHAP Violations)

49. Paragraphs 1 through 48 of the Complaint are re-alleged and incorporated herein by reference as if fully set forth below.

50. At all times pertinent to this action, RCC has been the owner and operator of the Facility.

51. The Facility is a portland cement plant that is a major source within the meaning of the Act, 42 U.S.C. § 7412(a)(1), and the Portland Cement NESHAP, 40 C.F.R. § 63.2.

1 52. From on or about June 12, 2002 through December 14, 2002 and April
2 14, 2003 through December 10, 2004, RCC violated 40 C.F.R. §§ 63.1344 and
3 63.1349(3)(b)(iv) by operating kilns at the Facility such that the temperature of the
4 gas at the inlet to the kiln particulate matter control devices exceeded the applicable
5 temperature limit.

6 53. On or about January 25 and January 27, 2005, RCC violated 40 C.F.R.
7 § 63.1348 by operating the Facility such that gases exhibiting opacity in excess of
8 ten percent were caused to be discharged from the rock reclaimer, kiln 6-7 clinker
9 belt, dust collector 19 (raw mills 5-6), belt 3 to 18 transfer point (kiln 1-5 clinker),
10 and belt 21 to 23 transfer point (clinker storage system).

11 54. On or about August 16, 22, 25 and September 1, 2, and 3 of 2002,
12 RCC violated 40 C.F.R. § 63.1350(e) by failing to perform Method 9 visual opacity
13 tests of the mill sweep and air separator PMCDs at the Facility after visible
14 emissions from those sources had been observed during two previous Method 22
15 tests.

16 55. From on or about June 14, 2002 until April 12, 2005, RCC violated 40
17 C.F.R. § 63.6(e)(3)(i), as incorporated into the Portland Cement NESHAP, 40
18 C.F.R. § 63.1342(a), by failing to have a startup, shutdown, and malfunction plan
19 that described procedures for operating and maintaining each crusher, raw mill,
20 finish mill, storage mill, and related dust collection/suppression equipment during
21 periods of startup, shutdown, and malfunction.

22 56. From on or about June 12, 2002 to April 12, 2005, RCC violated and
23 40 C.F.R. § 63.6(e)(1)(i), as incorporated into the Portland Cement NESHAP, 40
24 C.F.R. 63.1342(a), by failing to operate and maintain, at all times, all affected
25 sources at the Facility in a manner consistent with good air pollution control
26 practices for minimizing emissions.

1 57. Based on these violations and pursuant to Section 113(b) of the Act,
2 42 U.S.C. § 7413(b), RCC is liable for injunctive relief and civil penalties of not
3 more than \$27,500 per day for each such violation occurring before March 15, 2004
4 and of not more than \$32,500 per day for each such violation occurring after March
5 15, 2004, as provided for in the Federal Civil Penalties Inflation Adjustment Act of
6 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; see 40 C.F.R. Part 19, 69
7 Fed. Reg. 7126 (Feb. 13, 2004).

8 **SECOND CLAIM FOR RELIEF**

9 **(Excess NOx Emissions in Violation of MDAQMD Rule 1161)**

10 58. Paragraphs 1 through 48 of the Complaint are re-alleged and
11 incorporated herein by reference as if fully set forth below.

12 59. MDAQMD Rule 1161 has been approved by EPA and is part of the
13 federally enforceable California SIP. Rule 1161 provides limitations on emissions
14 of NOx from portland cement kilns located within the federal ozone non-attainment
15 area of MDAQMD.

16 60. At all times relevant to this action, the Facility was located within the
17 federal ozone non-attainment area of MDAQMD.

18 61. At all times relevant to this action, each of the portland cement kilns
19 operated at the Facility was less than 14' in diameter, less than 40' in length, and
20 employed no preheating of the dry feed. Accordingly, each kiln at the Facility
21 qualified as a "short dry kiln" under MDAQMD Rule 1161.

22 62. From on or about June 13, 2003 to February 4, 2005, RCC violated
23 MDAQMD Rule 1161 by operating its short dry kilns such that NOx emissions
24 from those kilns exceeded, on at least 74 days, the applicable limit.

25 63. Based on these violations and pursuant to Section 113(b) of the Act,
26 42 U.S.C. § 7413(b), RCC is liable for injunctive relief and civil penalties of not
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1 more than \$27,500 per day for each such violation occurring before March 15, 2004
2 and of not more than \$32,500 per day for each such violation occurring after March
3 15, 2004, as provided for in the Federal Civil Penalties Inflation Adjustment Act of
4 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; see 40 C.F.R. Part 19, 69
5 Fed. Reg. 7126 (Feb. 13, 2004).

6 **THIRD CLAIM FOR RELIEF**

7 **(Title V Violations)**

8 64. Paragraphs 1 through 48 of the Complaint are re-alleged and
9 incorporated herein by reference as if fully set forth below.

10 65. At all times relevant to this action, the Facility was a "major source"
11 within the meaning of Section 501(2) of the Act, 42 U.S.C. § 7611(2), and the
12 implementing regulations at 40 C.F.R. § 70.2

13 66. Pursuant to Title V of the Act, 42 U.S.C. §§ 7661 through 7661f,
14 MDAQMD issued federal operating permit no. 1200003 (the "Title V permit") to
15 RCC for the Facility on March 17, 2004.

16 67. Among other things, Part III of the Title V permit requires RCC to
17 maintain pressure-differential measurement devices on all baghouses and dust
18 collectors at the Facility. Part III of the Title V permit also requires RCC to
19 implement a maintenance program for all baghouses and dust collectors that
20 includes monthly stack observations, quarterly visual inspections of all associated
21 equipment, and weekly measurements of the pressure differential across the bags.

22 68. From on or about July 1, 2002 through September 30, 2004, RCC
23 violated requirements in Part III of the Title V permit by failing to perform at least
24 40 quarterly inspections of equipment associated with baghouses and dust
25 collectors, including the bags and their suspension system, at the Facility.

26 69. From on or about March 17, 2004 through July 2004, RCC violated
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1 requirements in Part III of the Title V permit by failing to perform weekly
2 measurements of the pressure differential of 88 dust collectors at the Facility.

3 70. From on or about July 28, 2004 through January 10, 2005, RCC
4 violated requirements in Part III of the Title V permit by failing to maintain
5 pressure-differential measurement devices on all baghouses and dust collectors at
6 the Facility.

7 71. RCC's violations of the Title V permit constitute violations of Section
8 502(a) of the Act, 42 U.S.C. § 7661a(a).

9 72. Based on these violations and pursuant to Section 113(b) of the Act,
10 42 U.S.C. § 7413(b), RCC is liable for injunctive relief and civil penalties of not
11 more than \$27,500 per day for each such violation occurring before March 15, 2004
12 and of not more than \$32,500 per day for each such violation occurring after March
13 15, 2004, as provided for in the Federal Civil Penalties Inflation Adjustment Act of
14 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; see 40 C.F.R. Part 19, 69
15 Fed. Reg. 7126 (Feb. 13, 2004).

16 **PRAYER FOR RELIEF**

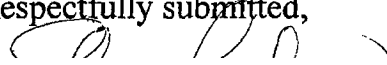
17 WHEREFORE, the United States respectfully requests that this Court:

18 1. Permanently enjoin the Defendant from operating the Facility, except in
19 compliance with the Act, the portland cement NESHAP, the California SIP,
20 including MDAQMD Rule 1161, and its Title V permit, as applicable;

21 2. Assess civil penalties of up to \$27,500 per day for each day of violation
22 occurring between January 30, 1997 through March 15, 2004 and up to \$32,500 per
23 day for each violation after March 15, 2004;

24 3. Award the United States its costs; and

25 4. Grant the United States such other relief as the Court deems just and
26 proper.

1 Respectfully submitted,
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